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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT T. BELL, PAUL S. HAHN,
MICHAEL H. MCCLUNG, and RICHARD B. PLATT

Appeal 2008-2595
Application 09/032,083
Technology Center 2600

Decided: November 26, 2008

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and R. EUGENE VARNDELL, JR., *Administrative Patent Judges*.

VARNDELL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-10, 12, 14-30, 32, and 34-105. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

The invention claimed on appeal is directed to a “communication system capable of performing state-based signaling on behalf of stateless clients and related methods of operation” (App. Br. 7; Supp. Br. 2). The communication system includes state-based terminals (205, 206, 225) and stateless clients (235, 236, 237) (Spec. 13-14, Fig. 2). A server (230) arranged between the stateless clients and the state-based terminals translates between stateless signaling messages of the stateless client and state-based signaling messages of the state-based terminals (Spec. 14, Fig. 5).

Claim 1, which further illustrates and represents the invention claimed on appeal, follows:

1. A system capable of performing state based signaling on behalf of a stateless client, comprising:
a controller, couplable to a state based terminal, that translates at least one stateless signaling message received from said stateless client to at least one state based signaling message for presentation to said state based terminal thereby facilitating a media stream communications session between said stateless client and said state based terminal using an Internet Protocol (IP) based network, wherein the media stream communications session is comprised of packets exchanged between said stateless client and said state-based terminal.

The Examiner relies on the following prior art reference to show unpatentability:

Amir

US 6,711,166 B1

Mar. 23, 2004

The Final Rejection mailed on May 17, 2006 set forth a rejection of claims 1-12, 14-32, and 34-105 on appeal as being anticipated under 35 U.S.C. § 102(e) by Amir. The Final Rejection included a rejection under 35 U.S.C. § 103(a). The Examiner withdrew the § 103 rejection in the Examiner's Answer mailed on February 8, 2006 (Ans. 2-3).

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Appeal Brief filed on November 16, 2005, the Examiner's Answer mailed on February 8, 2006, the Reply Brief filed on April 7, 2006, and the Supplement to the Appeal Brief filed on August 3, 2007 for their respective details. Appellants only argue the patentability of independent claim 1 on appeal (App. Br. 9-11; Reply Br. 2-5). Appellants' Briefs contain no separate arguments for claims 2-10, 12, 14-30, 32, and 34-105. Arguments which Appellants could have made but did not make in their Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii). Therefore, all claims on appeal stand or fall with independent claim 1.

ISSUE

Have Appellants shown that the Examiner failed to establish that each and every element as set forth in claim 1 is disclosed in Amir?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellants explain that stateless signaling messages include an indication such as a telephony "off-hook" event, a telephony "on-hook" event, a telephony "button depressed" event, a telephony "digit dialed" event, and a "client registration" event (Spec. 9). Alternatively, a stateless signaling message includes a command such as "light a specified lamp, display text, turn a ringer on/off, play a specified tone, associate a button with a specified function, and connect at least one media stream" (Spec. 9).

2. Appellants categorize a stateless client as a low-capability client that uses stateless messaging and/or is not capable of performing state-based signaling (Spec. 2, 5-6, 10). Representative stateless clients are a PBX device, a “dumb” terminal, an individual telephone, at least one digital trunk interface, at least one analog trunk interface, at least one digital station interface, at least one analog station interface, and a shared system resource (Spec. 9-10, 12-13).

3. Appellants identify their state-based clients or terminals (205) as based on well-known protocols, including H.235 (Fig. 2, Spec. 8-9, App. Br. 9-10)

4. Appellants show a server arranged between a state-based terminal and a stateless client (Figs. 2, 5). The server (230) contains a controller (340) that translates a stateless signaling message of the stateless client to and from a state-based signaling message of a state-based terminal (Spec. 14, Fig. 3). This translation “may facilitate media stream communications sessions to and from a stateless client it serves” (Spec. 14).

5. Appellants describe that a media stream includes voice, video, and data that can facilitate state-based and stateless messaging (Spec. 7).

6. In Figures 2A, 2B, 6A, and 6B, Amir shows devices that include analog telephones (26, 44A, 44B), which can be standard analog sets or support other protocols (e.g., CORNET by Siemens), ISDN telephones (26), analog and ISDN telephones associated with PBX (106), and video devices (46A, 46B) (Amir, col. 4, ll. 48-60; col. 9, ll. 7-62; col. 10, ll. 21-48).

7. Figures 2A, 2B, 6A, and 6B of Amir show terminals that use well-known protocols (26, 48C, 48D, 117, 119), including H.323.

Appellants admit that such terminals are state-based terminals (App. Br. 9-10).

8. Figures 2A, 2B, 6A, 6B, and 7 of Amir show a controller (94) that is embedded into the gateway, switch, or router which are used to route data over an IP-based packet network (24) between a state-based terminal or client (i.e., 26A, 26B, 48C, 48D) and a stateless client (26, 44A, 44B, 106) (col. 1, l. 66 - col. 2, l. 8; col. 3, l. 60 - col. 4, l. 60; col. 5, l. 49 - col. 8, l. 54; col. 9, l. 29 - col. 11, l. 3; col. 11, l. 66 - col. 12, l. 8).

9. The packet data of Amir includes voice, data, video, and multimedia over IP. H.323 (col. 5, ll. 1-15), and thus includes a media stream as defined on appeal.

10. Amir discloses a system for packet networking capable of performing state-based signaling on behalf of a stateless client (Amir, Figs 1-7 and col. 1, l. 10 to col. 13, l. 45) (FF 6-9).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Anticipation is determined by first construing the claims and then comparing the properly construed claims to the prior art. *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1346 (Fed. Cir. 2002). During patent examination, the pending claims must be given their broadest reasonable interpretation “consistent with the specification.” *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

ANALYSIS

The Examiner correctly shows where all claimed elements appear in Amir (FF 1-10, Ans. 3-4). Appellants do not challenge the findings of the Examiner with the exception that Amir does not teach the limitations appearing at the end of claim 1 which, among other things, define that the media stream communications session is comprised of packets exchanged between a stateless client and a state-based terminal (App. Br. 9-12, Reply Br. 2-5).

In particular, Appellants' main argument is that Amir fails to describe the claimed limitations of “facilitating a media stream communications session between [a] stateless client and [a] state-based terminal using an Internet protocol (IP)-based network, where the media stream communications session is comprised of packets exchanged between said stateless client and said state-based terminal” (App. Br. 9). Appellants proffer the following arguments in support of their main argument:

- A. Amir does not teach a packet-based state-based terminal (App. Br. 9-10).
- B. Amir does not teach a stateless client (App. Br. 9-10).
- C. Amir does not teach a *packet-based* stateless client (App. Br. 9-10). In particular, Appellants argue that Amir's analog telephones, IP terminals, IP telephones, and ISBN telephones are not packet-based stateless clients (App. Br. 9-10; Reply Br. 2-5).

While Appellants argue that Amir does not teach a “packet-based state-based terminal” in Argument A, claim 1 on appeal does not include this expression or limitation. Rather, claim 1 simply defines a “state based terminal” without the words “packet-based.” Amir teaches a terminal and

Appellants define a state-based terminal that are the same, namely, both use a well-known protocol, such as H.235 (FF 3, 7). Amir describes that such “state-based terminals” are connected to the stateless clients through a controller that translates messages in a media stream exchanged therebetween (FF 7-9). Thus, Amir expressly discloses a state-based terminal in the arrangement required in the claims on appeal.

The stateless client claimed on appeal (Argument B) includes any low-capability client that is not capable of performing state-based signaling, which can include a PBX device, an individual telephone, analog trunk interface, or digital station interface (FF 2). Amir teaches analog telephones, ISBN telephones, and PBX devices (FF 6). The stateless clients defined by Appellants encompass the analog telephones, ISBN telephones, and PBX devices taught by Amir. The stateless clients of Amir are connected to state-based terminals through a controller that translates messages in a media stream therebetween (FF 8). Thus, Amir expressly discloses a stateless client coupled to a state-based terminal in the arrangement required in the claims on appeal.

Much of Appellants’ main argument and Argument C emphasize that Amir does not teach a “packet-based stateless client.” Appellants’ claims on appeal do not include the expression or limitation “packet-based stateless client.” Appellants’ Specification also does not describe this expression or limitation. Since Appellants’ arguments are based upon or stem from Amir not disclosing a limitation which is not required in the claims on appeal, Appellant's arguments of error in the Examiner's anticipation rejection are not pertinent to the issue on appeal.

Since the expression or limitation in question is not found in the claims on appeal, the Examiner need not find such a limitation in the teachings of Amir to establish anticipation. At least for these reasons, Appellants' arguments concerning the expression or limitation "packet-based stateless client" cannot demonstrate error in the Examiner's anticipation rejection.

While the words "packet-based" and "packet" do not appear in claim 1 on appeal, the last portion of claim 1 includes the word "packets." The Appellants' previously-mentioned main argument concerns the last portion of claim 1 that begins with the word "thereby." This portion of claim 1 cannot be construed as requiring the presence of a "packet-based stateless client," because this expression simply does not appear in the claim, as discussed above. Based on Appellants' Specification, we construe the claimed expression containing the word "packets" as follows: the messages exchanged between a stateless client and a state-based-terminal are packets between the state-based terminal and the controller, *but the messages are stateless (e.g., need not be in packets) between the stateless client and the controller* (FF 1-5).

Continuing the construction of the last portion of claim 1 on appeal, Appellants' Figure 5 shows a server (controller) coupled to a state-based terminal and a stateless client (FF 4). The controller transmits a media stream, which can be voice, video, and data, between the state-based terminal and stateless client (FF 5). A controller translates at least one stateless signaling message (e.g., a telephony "off-hook" event) from the stateless client to at least one state-based signaling message for presentation to the state-based terminal (FF 1, 4). In addition, the controller translates a

packet-based signaling message from the state-based terminal into a stateless message (e.g., station set lamp) that is sent to a stateless client (FF 1, 4).

Based on these considerations, we construe the last portion of claim 1 to define that the structure mentioned earlier in claim 1 “thereby facilitating” a media stream communications session (i.e., exchanging messages) between a stateless client and a state-based terminal using an Internet protocol (IP)-based network, wherein the media stream communications session comprises packets between the state-based terminal and the controller, while the media stream communications session is stateless (e.g., not comprising packets) between the stateless client and the controller.

As explained by the Examiner, Amir describes and shows the limitations mention in the previous paragraph (Ans. 3-4). For example, Amir expressly shows structure (state-based terminal, controller, and stateless client) “thereby facilitating” a media stream communications session (i.e., exchanging messages) between a stateless client and a state-based terminal using an Internet protocol (IP)-based network; wherein the messages are in packets between the state-based terminal and the controller, and the messages are stateless (i.e., not packets) between the stateless client and the controller, as required in claim 1 on appeal (FF 6-10). Accordingly, Appellant has not established any error with the Examiner's factual findings that Amir teaches all limitations of claim 1 on appeal.

CONCLUSION

Appellants failed to establish any error in the Examiner's position that Amir teaches each and every element in claim 1 on appeal. Since Appellants have not separately argued the patentability of claims 2-10, 12, 14-30, 32, and 34-105, these claims fall with claim 1. Accordingly, the rejection of claims 1-10, 12, 14-30, 32, and 34-105 under 35 U.S.C. § 102(e) is affirmed.

ORDER

The Examiner's decision rejecting claims 1-12, 14-32, and 34-105 under 35 U.S.C. §102(e) as being anticipated by Amir is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

Appeal 2008-2595
Application 09/032,083

AFFIRMED

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